

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

SB 633 - HB 1617

March 16, 2009

SUMMARY OF BILL: Adds a definition of “limited resource waters” to the Water Quality Control Act (WQCA) and excludes such waters and waters defined as “wet weather conveyances” from regulation by the Act.

ESTIMATED FISCAL IMPACT:

Decrease State Revenue - \$47,400

**Increase State Expenditures - \$7,200/One-Time
\$397,900/Recurring**

Other Fiscal Impact - According to the Department of Environment and Conservation (TDEC), this bill may place the state out of compliance with the Federal Clean Water Act. As a result, approximately \$2,000,000 in federal funds to the state may be jeopardized.

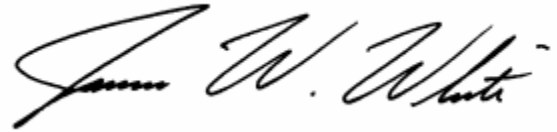
Assumptions:

- TDEC makes approximately 800 stream determinations annually.
- TDEC would require four new positions to perform the determinations under the scope identified by the bill. The recurring increase in state expenditures for salary, benefits, travel, and motor vehicle costs for these positions is \$397,900. The one-time cost for supplies associated with these positions is \$7,200.
- TDEC estimates that there will be a 30 percent decline in Aquatic Resource Alteration Permits issued for certain stream alterations. TDEC collects approximately \$158,000 annually in association with these permits. A 30 percent decrease would result in a decrease in state revenue of approximately \$47,400 ($\$158,000 \times 30\% = \$47,400$).
- As a result of the United States Supreme Court's decision in *Rapanos v. United States*, 126 S. Ct. 2208 (2006), the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers have issued agency guidelines for determining if a particular body of water is a “water of the United States.” These guidelines are based on federal law, rules, and

decisions of the courts. It appears that some of the waters which may be excluded from oversight by TDEC in accordance with the provisions of this bill would be considered waters of the United States. The state guidelines for oversight therefore would be inconsistent with the federal guidelines. As a result, the state may be out of compliance with the Federal Clean Water Act. Non-compliance would jeopardize up to \$2,000,000 in federal funds to the state.

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is fluid and cursive, with the first name "James" written in a smaller, more compact script than the last name "White".

James W. White, Executive Director

/cce